

## **EXHIBIT A**

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March 20, 2007

Page 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X  
IN RE: PHARMACEUTICAL : MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:  
PRICE LITIGATION : 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO :  
U.S. ex rel. Ven-A-Care of : Judge Patti B. Saris  
the Florida Keys, Inc. v. :  
Abbott Laboratories, Inc., : Chief Magistrate  
No. 06-CV-11337-PBS : Judge Marianne B.  
: Bowler  
-----X

HIGHLY CONFIDENTIAL

Tuesday, March 20, 2007

The video 30(b)(6) deposition of VICTORIA ROBEY,  
called for oral examination by Counsel for the  
Defendant Abbott Laboratories, Inc., pursuant to  
notice, held in the law offices of Hogan &  
Hartson, 111 South Calvert Street, Baltimore,  
Maryland 21202, beginning at 9:20 a.m., before

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<p>1 Carol J. Robinson, Registered Professional 2 Reporter and a Notary Public, when were present: 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>1 A P P E A R A N C E S (CONTINUED) 2 3 BERGER &amp; MONTAGUE, P.C. 4 BY: SUSAN SCHNEIDER THOMAS, ESQUIRE 5 1622 Locust Street 6 Philadelphia, PA 19103 7 (215) 875-3000 8 sthomas@bm.net 9 10 ON BEHALF OF DEFENDANT ABBOTT LABORATORIES: 11 JONES DAY 12 BY: R. CHRISTOPHER COOK, ESQUIRE 13 LOUIS GABEL, ESQ. 14 51 Louisiana Avenue, N.W. 15 Washington, D.C. 20001 16 (202) 879-3939 17 christophercook@jonesday.com 18 19 20 21 22 (CONTINUED)</p>
Page 3	Page 5
<p>1 A P P E A R A N C E S 2 3 ON BEHALF OF THE PLAINTIFFS: 4 United States Department of Justice 5 BY: ANA MARIA MARTINEZ, ESQUIRE 6 Assistant United States Attorney 7 Southern District of Florida 8 99 N.E. 4th Street 9 Miami, FL 33132 10 (305) 961-9431 11 12 Department of Health and Human Services 13 BY: LESLIE M. STAFFORD, ESQUIRE 14 Office of General Counsel 15 CMS Division 16 7500 Security Boulevard 17 Baltimore, Maryland 21244 18 (410) 786-9655 19 20 21 22 (CONTINUED)</p>	<p>1 A P P E A R A N C E S (CONTINUED) 2 3 ON BEHALF OF DEY, INC., 4 DEY, LP AND DEY, LP, INC.: 5 KELLEY DRYE &amp; WARREN LLP 6 BY: ANTONIA F. GIULIANA, ESQUIRE 7 101 Park Avenue 8 New York, New York 10178 9 (212) 808-7609 10 agiuliana@kelleydrye.com 11 12 ON BEHALF OF ROXANNE LABORATORIES: 13 KIRKLAND &amp; ELLIS 14 BY: JARED T. HECK, Esquire 15 200 East Randolph Drive 16 Chicago, IL 60601 17 312-469-7087 18 jheck@kirkland.com 19 (via telephone) 20 21 22 (CONTINUED)</p>

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<p>1 A P P E A R A N C E S (CONTINUED)</p> <p>2</p> <p>3 ON BEHALF OF SCHEIRING-WARRICK CORPORATION:</p> <p>4 ROPES AND GRAY</p> <p>5 BY: JOBE G. DANGANAN, Esquire</p> <p>6 One International Place</p> <p>7 Boston, MA 02110-2624</p> <p>8 (617)951-7290</p> <p>9 jobe.danganan@ropesgray.com</p> <p>10 (via telephone)</p> <p>11</p> <p>12 ON BEHALF OF BAXTER HEALTHCARE:</p> <p>13 DICKSTEIN SHAPIRO</p> <p>14 BY: TINA D. REYNOLDS, Esquire</p> <p>15 1825 Eye Street NW</p> <p>16 Washington, DC 20006</p> <p>17 (202) 420-4114</p> <p>18 reynoldst@dicksteinshapiro.com</p> <p>19 (via telephone)</p> <p>20</p> <p>21</p> <p>22 (CONTINUED)</p>	<p>1 C O N T E N T S</p> <p>2 EXAMINATION OF VICTORIA ROBEY Page</p> <p>3 By Mr. Cook..... 11</p> <p>4 By Mr. Heck..... 187</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 Number Description Page</p> <p>8 Exhibit Abbott 069 Memo Dated 5-21-92</p> <p>9 w/Attachments..... 20</p> <p>10 Exhibit Abbott 070 Document Entitled</p> <p>11 Original Complaint..... 75</p> <p>12 Exhibit Abbott 071 Abbott Laboratories,</p> <p>13 Inc.'s Notice of</p> <p>14 30(b)(6) Deposition of</p> <p>15 Plaintiff The United</p> <p>16 States of America..... 86</p> <p>17 Exhibit Abbott 072 Group Exhibit Consisting</p> <p>18 of Memo dated 6-8-92 with</p> <p>19 attachments..... 88</p> <p>20 Exhibit Abbott 073 Document Retention</p> <p>21 Schedule..... 154</p> <p>22</p>
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<p>1 A P P E A R A N C E S (CONTINUED)</p> <p>2</p> <p>3 ON BEHALF OF ASTRAZENECA:</p> <p>4 DAVIS POLK &amp; WARDWELL</p> <p>5 BY: CATHERINE LIFESO, Esquire</p> <p>6 450 Lexington Avenue</p> <p>7 New York, NY 10017</p> <p>8 (212)450-4452</p> <p>9 catherine.lifeso@dpw.com</p> <p>10 (via telephone)</p> <p>11</p> <p>12 Also Present: Michael Hunterton, Videographer</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 THE VIDEOGRAPHER: Good morning.</p> <p>2 This is the videotape deposition of Vicky Robey</p> <p>3 taken by the defendant party in the matter of In</p> <p>4 Re Pharmaceutical Industry Average Wholesale</p> <p>5 Price Litigation, MDL Number 1456, Civil Action</p> <p>6 Number 01-CV-12257-PBS before the United States</p> <p>7 District Court for the District of Massachusetts.</p> <p>8 The date is March 20, 2007 and this</p> <p>9 deposition is being held at Hogan and Hartson,</p> <p>10 111 South Calvert Street in Baltimore, Maryland.</p> <p>11 The time on the monitor is 9:20 a.m.</p> <p>12 My name is Michael Hunterton and I am</p> <p>13 the certified videographer associated with the</p> <p>14 firm of Henderson Legal Services located at 1015</p> <p>15 Fifteenth Street, Northwest in Washington, D.C.</p> <p>16 The court reporter is Carol Robinson, associated</p> <p>17 with the same firm.</p> <p>18 Will counsel on the telephone please</p> <p>19 introduce themselves for the record?</p> <p>20 MR. HECK: This is Jared Heck with</p> <p>21 Kirkland &amp; Ellis, LLP. I represent Defendant</p> <p>22 Roxanne Laboratories, Incorporated and several</p>

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<p>1 contractors and CMS, our staff, that they were to 2 preserve specific documents for other 3 litigations. 4 Q Who was the author of those 5 documents? 6 A I was the author -- it's -- there are 7 various authors throughout CMS, depending on 8 where the documents were. 9 Q I suppose I should have asked first, 10 how big a pile of documents are we talking? 11 A Not very. 12 Q A dozen pages, two dozen pages? 13 A Approximately no more than two dozen 14 pages. 15 Q All right. You indicated that you 16 were the author of some, other people within CMS 17 were the author of others? 18 A Yes. 19 Q Were any of them authored by 20 attorneys? 21 A I don't recall. 22 MR. COOK: Okay. Just so I know</p>	<p>1 Q I'd like to go through the documents 2 I just handed you in Exhibit Abbott 069. As I 3 understand, they are out of Bates number order 4 although they are all there. They are in date 5 order. And so if you could just -- I'd like to 6 go through page by page and have you describe for 7 me what each of them is. 8 The first is -- and I'll describe it 9 just for the record so we have an idea what we 10 are looking at, it's page 8, Bates number page 11 0008, is dated May 21, 1992. It purports to be 12 from the Chief, Distribution Management Branch of 13 OBA to regional office records liaison officers 14 regarding freeze on all Medicare claims at the 15 Federal Records Center, and it's signed by Jane 16 Eagan, E-A-G-A-N. It's copied to the director of 17 OFO, the director of BPO, with blind copies to 18 Bill Zavoina, Z-A-V-O-I-N-A; Don Posen, 19 P-O-S-E-N; Les, L-E-S, Horneman, H-O-R-N-E-M-A-N; 20 and Lee, L-E-E, Mosedale, M-O-S-E-D-A-L-E. 21 Are you familiar with this document? 22 A Yes. I wrote it.</p>
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<p>1 whether to be cautious about it, are any of those 2 -- are you asserting privileges to any of those? 3 MS. MARTINEZ: Yes. There may be 4 privileges to some. 5 MR. COOK: Okay. 6 BY MR. COOK: 7 Q Who were the recipients of those 8 documents? 9 A CMS staff and our Medicare 10 contractors. 11 Q Were any of the recipients 12 specifically attorneys, addressed to attorneys? 13 A Not that I recall. 14 Q Did those documents relate to in any 15 way this litigation, that is, the Ven-a-Care ex 16 rel. United States versus Abbott litigation, to 17 the best of your knowledge? 18 A I don't think so, no. 19 Q Did those documents relate to the 20 collection or preservation of documents relating 21 to either drug pricing or drug reimbursement? 22 A Not that I recall.</p>	<p>1 Q You wrote it? 2 A Yes. 3 Q You aren't Jane Eagan, are you? 4 A No, I'm Vicky Robey, down at the 5 bottom. 6 Q Could you tell me what the document 7 is? 8 A Yes. This is a notice that went out 9 to our regional records liaison officers. They 10 were to notify the Medicare contractors to 11 preserve all Medicare claims records. This was a 12 result of a notice that CMS received from the 13 Department of Justice through our general 14 counsel, asking them not to destroy any records. 15 Q You say Medicare claims records. 16 What is a Medicare claim record? 17 A A form 1500. It's what the doctors 18 fill out, hospitals fill out for Medicare 19 patients as far as patient back from CMS. 20 Q And in 1992, that was a paper 21 document or was it electronic? 22 A Both formats.</p>

7 (Pages 22 to 25)

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1 Q Other than the actual 1500 which I  
2 understand is a single piece of paper, right?  
3 A Yes.  
4 Q Other than the 1500, did this freeze  
5 notice apply to any other documents.  
6 A It was anything that pertained to  
7 Medicare claims and/or payment records.  
8 Q Could you give me an example of what  
9 that would include?  
10 A I don't know off the top of my head.  
11 It is listed in our agency's records schedule.  
12 Q Oh, okay. So, when we get to the  
13 document, I guess there is a '98 document  
14 retention policy and a 2004 document retention  
15 policy that were produced in this litigation,  
16 that would have a list of what's included in a --  
17 A It would give you a --  
18 Q -- claims record?  
19 A A description of it, yes.  
20 Q Okay. But, for example -- I am just  
21 guessing here, tell me if I have guessed right --  
22 if there was some sort of a remittance, perhaps,

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1 would it be included?  
2 A Yes, if it dealt with payment.  
3 Q Okay. So, it deals specifically with  
4 the submission of the claim and the payment for  
5 the claim?  
6 A Yes.  
7 Q To your knowledge, is this freeze  
8 from May of 1992 still in place?  
9 A Yes, it is.  
10 Q And so in 1992, how far back did  
11 Medicare have claims that it was freezing?  
12 A 1986.  
13 Q And so as a result of this May 1992  
14 freeze, all HCFA 1500s and whatever other related  
15 documents are within the Medicare claims policy  
16 description --  
17 A Yes.  
18 Q -- would be in existence from 1986  
19 through today?  
20 A Correct.  
21 Q I'm getting a bit ahead of myself but  
22 that sounds like an awful lot of pieces of paper

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1 and electronic forms.  
2 A Yes, it is.  
3 Q How did you keep them all?  
4 A How do we keep them all? I can  
5 address the paper issue.  
6 Q Okay.  
7 A In the beginning, our Medicare  
8 contractors used the National Archives Federal  
9 Record Centers to store their records. That's  
10 where they still are.  
11 When we implemented this freeze, we  
12 notified the National Archives that we were not  
13 going to be able to destroy the records. They  
14 came back to us and said that they could no  
15 longer accept any additional records but they  
16 would keep the ones that they had. We then  
17 instructed our Medicare contractors to procure  
18 offsite storage for those records, and that's  
19 what they continued to do.  
20 Q In 1992, do you know what percentage  
21 of Medicare claims were paper versus electronic?  
22 A No, I don't.

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1 Q Now, I assume they have got to be all  
2 electronic, is that correct?  
3 A I don't know the ratio.  
4 Q So, you are still getting some paper  
5 claims even today?  
6 A Yes.  
7 Q What was the solution that you  
8 implemented in terms of non-Federal Records  
9 Center offsite storage?  
10 A The Medicare contractors were  
11 instructed to find facilities that closely --  
12 that closely or met so that it protected the  
13 records. They had to do a facility.  
14 Q So, it is carrier by carrier has some  
15 sort of offsite storage?  
16 A Yes.  
17 Q And that would be for the claims  
18 submitted to that carrier, presumably?  
19 A Yes.  
20 Q So, if I am Blue Cross/Blue Shield, I  
21 preserve the claims that are submitted to Blue  
22 Cross/Blue Shield?

8 (Pages 26 to 29)

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<p>1 A Yes. Blue Cross and Blue Shield 2 would be the ones to do the storage. 3 Q So, if one were to try to retrieve -- 4 to pick an example, if a patient was seen by 5 Ven-a-Care and received administration of an 6 Abbott drug like Comasin and submitted a claim to 7 Medicare, was paid that claim, whoever the 8 carrier was would, according to your instructions 9 have kept that HCFA 1500 for the claim and 10 payment? 11 A Yes. 12 MS. THOMAS: Objection to form. 13 BY MR. COOK: 14 Q How would I go about finding it? If 15 I knew a particular patient on a particular date, 16 how would I go about retrieving that HCFA 1500 17 form? 18 THE WITNESS: You would have to -- 19 MS. THOMAS: Objection. 20 BY MR. COOK: 21 Q You can answer. 22 A You would have to go to the carrier</p>	<p>1 A Yes. 2 Q Was that litigation initiated by the 3 government or against the government? 4 A I don't know. 5 Q Okay. I asked it because I don't 6 know. What was the Medicare secondary payer 7 litigation about, do you know? 8 MS. MARTINEZ: Objection in two ways. 9 One, it may call fir -- to the extent it may call 10 for communications with counsel and number two, 11 she is not a lawyer. 12 MR. COOK: Sure. 13 BY MR. COOK: 14 Q I understand you are not a lawyer and 15 I'm not trying to pry into attorney-client 16 communications but if you have an understanding 17 of what the underlying litigation was about that 18 precipitated this May 1992 freeze, can you tell 19 me what your understanding is? 20 A It was when Medicare was the primary 21 pay -- Medicare paid the primary and if the 22 person had secondary insurance, then the</p>
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<p>1 that has that claim stored. 2 Q Do you know how the carriers index 3 these? Because I imagine it is a pretty large 4 volume of the documents. 5 A No, I don't. 6 Q Have you ever been involved in 7 retrieving claims forms or claims data from the 8 carriers? 9 A I have not, no. 10 Q Who does that? 11 A Someone in CMS in the program area. 12 Q Okay. So, there would be someone in 13 CMS, presumably not you, who has the 14 responsibility for retrieving claims forms from 15 the carriers when there is a need for that 16 particular piece of paper? 17 A Yes. 18 Q What was the impetus for this 19 May 1992 freeze? 20 A Medicare secondary payer. 21 Q And was that -- I assume that was 22 litigation?</p>	<p>1 secondary insurance would kick in. But it should 2 be the other way around. The primary insurance 3 should have kicked in first and then Medicare 4 would have been the secondary payer. 5 Q And I take it from this memo, it 6 indicates that on May 6, the Department of 7 Justice requested HCFA, that's H-C-F-A, to freeze 8 all Medicare claims and payments records because 9 of current and future litigation and indicates 10 there is an attachment. Did you see that May 6 11 communication from DOJ? 12 MS. MARTINEZ: Objection. 13 Privileged. We did redact that attachment. 14 That's why you don't have it. 15 BY MR. COOK: 16 Q Without getting into what the 17 substance of it is, did you see the May 6 18 communication? 19 A Yes. 20 Q And so according to this memo, DOJ 21 asked HCFA to freeze a universe of documents. 22 Correct?</p>

9 (Pages 30 to 33)

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1 A Yes.  
2 Q And CMS did so?  
3 A Yes.  
4 Q And by this indication, it looks like  
5 CMS did so within 15 days.  
6 A Yes.  
7 Q And has done so for the last 15 years  
8 or approximately?  
9 A Uh-huh.  
10 Q You have to say yes.  
11 A I'm sorry. Yes.  
12 Q Has continued to do so?  
13 A Yes.  
14 Q Effectively?  
15 A Yes.  
16 Q Before going on to the next document,  
17 are there any other instances that you are aware  
18 of that DOJ has asked HCFA or I guess now CMS to  
19 freeze documents in connection with litigation?  
20 MS. MARTINEZ: Objection to the  
21 extent that it calls for privileged  
22 communications.

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1 MR. COOK: Okay.  
2 BY MR. COOK:  
3 Q Are you aware of any other instances  
4 in which -- again, I don't know to know your  
5 conversations with your lawyers but are you aware  
6 of any other instance in which DOJ has asked HCFA  
7 to freeze documents in connection with  
8 litigation?  
9 A I'm not sure if what I am aware of  
10 was issued by Department of Justice.  
11 Q Let me come back from the other way.  
12 Are you aware of any other instances other than  
13 this in which HCFA is currently or has frozen  
14 documents since 1992 because of pending  
15 litigation?  
16 A Yes.  
17 Q Approximately how many?  
18 A Maybe around nine or ten.  
19 Q So, less than one a year on average--  
20 MS. THOMAS: Objection.  
21 BY MR. COOK:  
22 Q -- for the last 15 years?

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1 MS. MARTINEZ: Objection to the form.  
2 BY MR. COOK:  
3 Q You're right. I'm asking that in a  
4 bad way. When you say nine or ten, are you aware  
5 of nine or ten that have been instituted or nine  
6 or ten that are in place now?  
7 A Nine or ten that were instituted.  
8 Q And some have expired or are they all  
9 still in place?  
10 A I don't think any of them have  
11 expired. They are all still being frozen.  
12 Q Sure. And I got ahead of myself with  
13 this document and I apologize. I'd like to go  
14 back a little bit and just go over your  
15 background and what you do. That's my fault.  
16 Tell me, where did you go to school?  
17 A Catonsville High School.  
18 Q Where did you go to school after  
19 Catonsville High School?  
20 A Nowhere else.  
21 Q And what did you do after high  
22 school?

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1 A I started to work for government.  
2 Q Where did you start work for  
3 government?  
4 A It was the bureau of Health Insurance  
5 when they were part of the Social Security  
6 Administration. I was a clerk-steno.  
7 Q Is that the predecessor to what is  
8 now CMS or is that a different agency?  
9 A Originally it was the Bureau of  
10 Health Insurance, then HCFA, and now CMS.  
11 Q When did you start working for the  
12 government?  
13 A 1973.  
14 Q And you say you started out as a  
15 steno --  
16 A Clerk-stenographer.  
17 Q How long were you a  
18 clerk-stenographer?  
19 A Approximately three or four years.  
20 Q And then can you give me just  
21 generally what your progression through  
22 government employment has been since then?

10 (Pages 34 to 37)

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<p>1 subpoena in civil litigation and that there is 2 civil litigation going on, that the fiscal 3 intermediaries and carriers may have documents 4 responsive or relating to that litigation? 5 A Uh-huh. 6 Q And that should be an indication to 7 them that they should not destroy documents. Is 8 that what I understand you to be saying about the 9 implicit message of this memo? 10 A And I can't answer to -- 11 MS. THOMAS: Objection. 12 THE WITNESS: I can't answer to that 13 because I was not an author of this so I don't 14 know what -- what they were relaying. 15 BY MR. COOK: 16 Q And I want to step completely out of 17 this memo and say when you say that it's an 18 indication to you that the existence of 19 litigation indicates you should preserve 20 documents, I'm just wondering how you came to 21 that understanding. 22 MS. MARTINEZ: Objection --</p>	<p>1 MS. THOMAS: Objection. 2 BY MR. COOK: 3 Q I apologize. Let me move on. I'm 4 asking you about a memo that you know nothing 5 about, and I know that's hard to do. I'm afraid 6 this one maybe similar but I do have to find out 7 if you had any involvement other than just 8 receiving it, Ms. Robey. 9 There is a November 18, 2003 memo. 10 For the record, it is documents 0003 through 11 0004. It is from, again, Gregory Carson. It's 12 directed this time not only to the fiscal 13 intermediaries and all carriers but to all 14 durable medical equipment regional carriers, and 15 this also has a similar subject. It is 16 coordination of responses to subpoenas and other 17 requests from outside entities regarding TAP, all 18 caps, T-A-P, Pharmaceutical Products, Inc. and 19 Lupron, L-U-P-R-O-N, Part II, Roman numeral II, 20 preservation of documents and contact 21 identification. 22 As a preliminary matter, were you</p>
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<p>1 MS. THOMAS: Objection. 2 MS. MARTINEZ: -- to the extent that 3 it calls for privileged communication. 4 BY MR. COOK: 5 Q I don't want you to talk about 6 conversations with your lawyers but how did you 7 come to the understanding that if there is 8 litigation ongoing and you have documents 9 relating to that litigation, that one should 10 preserve those documents? 11 MS. THOMAS: Objection. 12 BY MR. COOK: 13 Q If you remember. 14 A I mean, that's just common sense. 15 You don't want to throw away things. 16 Q Anything other than common sense? 17 A Pardon me? 18 Q Anything other than common sense? 19 A No. 20 Q No? Just self-apparent? 21 A Yes. 22 Q Everybody should know?</p>	<p>1 also not involved -- 2 A Correct. 3 Q -- in drafting this one? 4 A Correct. 5 Q But you received it? 6 A Yes. 7 Q Is it fair to say this document does 8 direct the addressees to preserve documents? 9 A Yes. 10 Q And it indicates, at least as of 11 November 18, 2003, that the recipients of the 12 memorandum should preserve documents that concern 13 TAP, Lupron, Zoladex, Z-O-L-A-D-E-X, drug 14 companies other than TAP, or any other drug 15 reimbursed by Medicare. 16 MS. THOMAS: Objection. 17 BY MR. COOK: 18 Q Did you have any documents that you 19 preserved in response to this memorandum? 20 A I myself or the agency? 21 Q That's a silly question. You're not 22 an FI carrier or a DMU regional carrier, are you?</p>

18 (Pages 66 to 69)

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<p style="text-align: right;">Page 70</p> <p>1 A No.</p> <p>2 Q So, you wouldn't preserve anything in</p> <p>3 response to this, I take it?</p> <p>4 A (Witness shakes head.)</p> <p>5 Q Did you have any involvement with</p> <p>6 this other than receiving it and putting in your</p> <p>7 file?</p> <p>8 A No.</p> <p>9 Q In what capacity did you receive</p> <p>10 this? Why did it come to you?</p> <p>11 A I'm listed as a cc on the second</p> <p>12 page.</p> <p>13 Q Do you have any idea why you would</p> <p>14 you be a cc to this memo to the carrier and the</p> <p>15 FIs?</p> <p>16 A Because I'm the agency records</p> <p>17 officer.</p> <p>18 Q So, you would keep a record of</p> <p>19 directions to these outside entities to preserve</p> <p>20 documents?</p> <p>21 A Yes.</p> <p>22 Q To the best of your knowledge, did</p>	<p style="text-align: right;">Page 72</p> <p>1 portion of the second page redacted.</p> <p>2 Ms. Robey, do you recognize Bates</p> <p>3 numbered -- pages Bates numbered 5 through 7?</p> <p>4 A Yes.</p> <p>5 Q What is it?</p> <p>6 A It's a notice that was sent out to</p> <p>7 CMS centers and offices asking them to identify a</p> <p>8 person who is going to coordinate the discovery</p> <p>9 request.</p> <p>10 Q Other than receiving this memo, were</p> <p>11 you involved at all in the preparation of this</p> <p>12 memo?</p> <p>13 A No, I was not.</p> <p>14 Q Prior to receiving this memo on</p> <p>15 February 19, 2004, are you aware of any steps</p> <p>16 that were taken to preserve documents as</p> <p>17 described in this memorandum?</p> <p>18 A No.</p> <p>19 MS. THOMAS: Objection.</p> <p>20 BY MR. COOK:</p> <p>21 Q Sorry. We spoke over each other.</p> <p>22 Was that no?</p>
<p style="text-align: right;">Page 71</p> <p>1 the recipients of this memo comply with its</p> <p>2 instructions?</p> <p>3 MS. THOMAS: Objection.</p> <p>4 THE WITNESS: I have no way of</p> <p>5 knowing.</p> <p>6 BY MR. COOK:</p> <p>7 Q You haven't heard that nobody did not</p> <p>8 comply?</p> <p>9 A Correct.</p> <p>10 Q A double negative there.</p> <p>11 The next memo is Bates numbered 0005</p> <p>12 through 0007. For the record, I'll describe it.</p> <p>13 It is dated February 19, 2004. It is addressed</p> <p>14 to all center and office directors and regional</p> <p>15 administrators. It is from Jacquelyn,</p> <p>16 J-A-C-Q-U-E-L-Y-N, Y. White, who appears to be</p> <p>17 the or purports to be, at least, the director,</p> <p>18 Office of Strategic Operations and Regulatory</p> <p>19 Affairs. The subject is Document Preservation</p> <p>20 and Production, Lupron Marketing and Sales</p> <p>21 Practice Litigation, and Pharmaceutical Industry</p> <p>22 Average Wholesale Price Litigation. It has a</p>	<p style="text-align: right;">Page 73</p> <p>1 A No.</p> <p>2 Q Thank you. After receiving this memo</p> <p>3 in February 2004, what role did you have in the</p> <p>4 activities described in this memorandum?</p> <p>5 MS. MARTINEZ: Objection to form.</p> <p>6 BY MR. COOK:</p> <p>7 Q It was poorly phrased. I'll try it</p> <p>8 again.</p> <p>9 Ms. Robey, were you involved at all</p> <p>10 actively in the preservation of records as</p> <p>11 directed in this memorandum?</p> <p>12 A No because I did not keep these</p> <p>13 records.</p> <p>14 Q And did you gather any documents</p> <p>15 responsive to this particular request?</p> <p>16 A No.</p> <p>17 MS. MARTINEZ: I just want to be</p> <p>18 clear for the record that these questions you are</p> <p>19 addressing to Vicky Robey as Vicky Robey, not</p> <p>20 Vicky Robey at CMS; for example, when you ask her</p> <p>21 did yourself gather any documents, I mean, you're</p> <p>22 obviously asking Ms. Robey, not for her to answer</p>

19 (Pages 70 to 73)

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<p style="text-align: right;">Page 74</p> <p>1 on behalf of all of CMS with respect to this.</p> <p>2 MR. COOK: Oh, sure.</p> <p>3 BY MR. COOK:</p> <p>4 Q Oh, sure. We're not asking you what</p> <p>5 you've done to gather documents. I'm not asking</p> <p>6 for CMS to testify about what you, Vicky Robey,</p> <p>7 did to preserve the documents.</p> <p>8 MS. MARTINEZ: No, no. What I mean</p> <p>9 is that you were not asking -- since this is a</p> <p>10 30(b)(6) depo, I just want to be clear on the</p> <p>11 record that that was not the answer on behalf of</p> <p>12 CMS.</p> <p>13 BY MR. COOK:</p> <p>14 Q Correct. That question and answer,</p> <p>15 you were testifying as Vicky Robey, not as the</p> <p>16 designee of the 30(b)(6). I should have made</p> <p>17 that clear.</p> <p>18 Back into character, though -- do we</p> <p>19 have a copy of the complaint?</p> <p>20 MR. GABEL: The original?</p> <p>21 MR. COOK: Yes.</p> <p>22 BY MR. COOK:</p>	<p style="text-align: right;">Page 76</p> <p>1 MR. COOK: Does anybody else need a</p> <p>2 copy? I would love to get rid of them so I don't</p> <p>3 have to carry them back.</p> <p>4 BY MR. COOK:</p> <p>5 Q If you could just take a quick</p> <p>6 moment, I realize that's a lengthy document but</p> <p>7 take a look at it and tell me whether you've ever</p> <p>8 seen that document before?</p> <p>9 MS. THOMAS: You might want to</p> <p>10 clarify whether you mean, whether she's ever seen</p> <p>11 this document that may or may not have had these</p> <p>12 redactions.</p> <p>13 MR. COOK: Okay.</p> <p>14 THE WITNESS: No. I've never seen</p> <p>15 this before.</p> <p>16 BY MR. COOK:</p> <p>17 Q Either with or without the</p> <p>18 redactions?</p> <p>19 A No.</p> <p>20 Q And just for the record, on page 69,</p> <p>21 it indicates that it was served on June 23 of</p> <p>22 1995.</p>
<p style="text-align: right;">Page 75</p> <p>1 Q I'd like to show you real quickly --</p> <p>2 we'll set those aside and come back it -- a copy,</p> <p>3 I'll mark it as Exhibit Abbott 070.</p> <p>4 (Exhibit Abbott 070,</p> <p>5 document entitled Original</p> <p>6 Complaint, was marked for</p> <p>7 identification.)</p> <p>8 MS. MARTINEZ: Could I see it before</p> <p>9 you --</p> <p>10 MR. COOK: Oh, absolutely. It is a</p> <p>11 copy of -- that one is thicker because it is two</p> <p>12 of them. It is a copy of the original complaint</p> <p>13 filed by Ven-a-Care. It indicates on the cover</p> <p>14 sheet that Ven-a-Care put on the document</p> <p>15 Original Complaint filed on about June 23, 1996.</p> <p>16 I believe that's incorrect for the record, that</p> <p>17 it is 1995, inasmuch as the civil case number is</p> <p>18 a '95 case number.</p> <p>19 MS. MARTINEZ: Do you have an extra</p> <p>20 copy that counsel for Ven-a-Care could use?</p> <p>21 MR. COOK: Absolutely. Absolutely.</p> <p>22 MS. THOMAS: Thank you.</p>	<p style="text-align: right;">Page 77</p> <p>1 To the best of your knowledge,</p> <p>2 Ms. Robey, did CMS institute any document</p> <p>3 preservation instruction in connection with this</p> <p>4 complaint that was filed on June 23, 1995?</p> <p>5 A Not that I'm aware of.</p> <p>6 Q Going back to the February 19, 2004</p> <p>7 memorandum included within Exhibit Abbott 069, are</p> <p>8 you aware of any subsequent memoranda that were</p> <p>9 issued relating to the litigation described in</p> <p>10 this February 19, 2004 memorandum regarding</p> <p>11 preservation of documents?</p> <p>12 A There was one after this in January</p> <p>13 of 2007, I believe.</p> <p>14 Q And what did that one -- again, is</p> <p>15 that a privileged communication?</p> <p>16 MS. MARTINEZ: Objection to the</p> <p>17 extent it calls for privileged communication.</p> <p>18 You may be able to ask her if she has information</p> <p>19 from anybody who is a nonlawyer regarding that.</p> <p>20 BY MR. COOK:</p> <p>21 Q Just sticking with the memorandum and</p> <p>22 then moving on to information from a nonlawyer,</p>

20 (Pages 74 to 77)

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1 do you remember from whom the January 2007  
2 memorandum was from?

3 A It was from our program area -- I'm  
4 trying to remember the lady's name, Mary Beth --  
5 Mary Beth Jason, I think. I'm not sure about the  
6 last name.

7 Q Is she an attorney?

8 A No.

9 Q Without describing the contents of  
10 the memorandum, can you describe generally what  
11 the nature of the document was?

12 MS. THOMAS: Objection.

13 MS. MARTINEZ: If you would focus  
14 your question with respect, if she has any  
15 information from a nonlawyer regarding whether or  
16 not that document instructed anyone to preserve,  
17 you might be able to get an answer that is  
18 helpful.

19 BY MR. COOK:

20 Q Do you have any information from a  
21 nonlawyer that would indicate whether that  
22 document was intended to preserve documents

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1 relating to litigation?

2 A Yes, I do.

3 Q From whom do you have that  
4 information?

5 A It is from Mary Beth, I think the  
6 last name is Jason.

7 Q She was the author of the memorandum?

8 A I believe so, yes.

9 Q Is this a conversation you had with  
10 Ms. Jason?

11 A A conversation as well as a copy of  
12 the correspondence.

13 Q Do you remember when and where this  
14 conversation took place, approximately?

15 A I talked with her yesterday as well  
16 as in the past where she contacted me regarding  
17 the agency's policy on retention.

18 Q As best you can recall, what did you  
19 say to Ms. Jason, what did she say to you in the  
20 earlier conversations?

21 A I can't remember.

22 Q Do you remember the nature of the

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1 conversation?

2 A It was with regard to preservation --  
3 not preservation but what the agency's policy was  
4 on retention and the appropriate way to word  
5 records management language in notice about  
6 preservation.

7 Q So, she called with a question?

8 A Yes.

9 Q And you answered her question?

10 A Yes.

11 Q A long conversation? Short  
12 conversation?

13 A I can't remember. It was before the  
14 holidays.

15 Q But she called to ask you about how  
16 one would go about drafting a document  
17 preservation or a hold memorandum?

18 A She wanted records management  
19 language to use. She didn't -- I did not -- I --  
20 I didn't give her content. I just talked with  
21 her and gave her instructions.

22 Q And what was your understanding about

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1 why she was asking this question of you?

2 A Because she was going to be preparing  
3 correspondence that was being released about  
4 preservation.

5 Q Do you know why she was going to send  
6 out correspondence relating to preservation at  
7 that time?

8 A She did not go into that with me.

9 Q You say just before the holidays.  
10 This would have been December of '96?

11 MS. THOMAS: Objection.

12 THE WITNESS: Oh. I'm talking -- no.

13 BY MR. COOK:

14 Q You said January of 2007. That's why  
15 I had my dates off. About when was this  
16 conversation, I should ask you?

17 A It was before the holidays in 2006.

18 Q Okay. So, before the Christmas  
19 holidays of 2006?

20 A I believe, yes.

21 Q So, it would have been November,  
22 December of 2006?

21 (Pages 78 to 81)

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<p>1 A I can't remember.</p> <p>2 Q But within the last five months, six</p> <p>3 months?</p> <p>4 A Maybe.</p> <p>5 Q Okay. I just wanted to make sure I</p> <p>6 had the right year, that I wasn't off by 12</p> <p>7 months.</p> <p>8 A You just said '96 before that.</p> <p>9 Q Right. So, before the holidays,</p> <p>10 December of --</p> <p>11 A But you said 1996.</p> <p>12 Q I'm so old that '96 and 2006 seem</p> <p>13 like the same year. I apologize. I didn't even</p> <p>14 understand it when you told me I had it wrong.</p> <p>15 So, 2006.</p> <p>16 A Okay.</p> <p>17 Q Within the last half a year?</p> <p>18 A (Witness nods head.)</p> <p>19 Q Is there any way you would figure out</p> <p>20 when that conversation took place?</p> <p>21 A No.</p> <p>22 Q As the records management officer for</p>	<p>1 specifically to a particular litigation?</p> <p>2 A Yes.</p> <p>3 Q Prior to that memorandum being</p> <p>4 distributed, without revealing the contents of</p> <p>5 that of that memorandum, had there ever been any</p> <p>6 prior communications within CMS relating to</p> <p>7 document preservations in connection to that</p> <p>8 case?</p> <p>9 MS. MARTINEZ: Objection to the</p> <p>10 extent that she knows.</p> <p>11 MR. COOK: Sure.</p> <p>12 BY MR. COOK:</p> <p>13 Q To the extent that you are aware of</p> <p>14 as the records officer for CMS, had there ever</p> <p>15 been any prior records preservation directions</p> <p>16 issued relating to that case that was the subject</p> <p>17 of Mary Beth's memorandum?</p> <p>18 A Yes.</p> <p>19 Q When was that?</p> <p>20 A Early 2003, late 2004.</p> <p>21 Q So, it is your understanding that</p> <p>22 those two cases were somehow connected?</p>
Page 83	Page 85
<p>1 the CMS home office had -- let me strike that and</p> <p>2 step one step back. Do you know what litigation</p> <p>3 she was asking in connection with?</p> <p>4 A I can't remember. I get hundreds of</p> <p>5 calls.</p> <p>6 Q The case about which Ms. Jason --</p> <p>7 A Mary Beth, I think the last name is</p> <p>8 Jason. The first name is Mary Beth.</p> <p>9 Q The case about which Mary Beth</p> <p>10 contacted you before the holidays in 2006, was</p> <p>11 that a case about which anybody, to your memory,</p> <p>12 had contacted you before?</p> <p>13 MS. THOMAS: Objection.</p> <p>14 THE WITNESS: I can't remember.</p> <p>15 BY MR. COOK:</p> <p>16 Q And without revealing any of the</p> <p>17 substance of it, did a memorandum subsequently</p> <p>18 come out from Mary Beth?</p> <p>19 A Yes.</p> <p>20 Q To whom was it addressed?</p> <p>21 A I can't remember.</p> <p>22 Q Did it describe -- did it relate</p>	<p>1 A Yes.</p> <p>2 Q The same case or connected?</p> <p>3 A I just associated it because of</p> <p>4 information that was provided in the subject</p> <p>5 line.</p> <p>6 Q Okay.</p> <p>7 A I'm not an expert on that.</p> <p>8 Q And I understand completely. Other</p> <p>9 than the 2003-2004 prior preservation memo, and</p> <p>10 that's the one we have here at pages 5 through 7,</p> <p>11 correct -- yes, 5 through 7.</p> <p>12 A Yes.</p> <p>13 Q Other than that February 19, 2004</p> <p>14 communication, had there ever, before that, been</p> <p>15 any preservation instructions issued in</p> <p>16 connection with that case?</p> <p>17 A Not that I'm --</p> <p>18 MS. THOMAS: Objection.</p> <p>19 THE WITNESS: Not that I'm aware of.</p> <p>20 THE REPORTER: Counsel, is this a</p> <p>21 good time to take a recess?</p> <p>22 MR. COOK: I'd be happy to. Thank</p>

22 (Pages 82 to 85)

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<p style="text-align: right;">Page 102</p> <p>1 What do you understand this document 2 to mean? 3 A That employees must take necessary 4 actions to preserve any e-mail records. 5 Q Now, you indicated before that your 6 primary responsibility is to paper records, as I 7 recall. Were you involved in crafting or 8 implementing this particular policy? 9 A I gave them records management 10 language. 11 Q When you say records management 12 language, what would that be? 13 A The paragraph that says, general 14 agency records management guidelines. 15 Q So that heading? 16 A Yes. Anything that's created or 17 received while conducting agency business is 18 classified as a record. 19 Q Okay. So, a description of what is a 20 record and then that gets incorporated into their 21 instructions as to what should be archived and 22 preserved? Did I get that right?</p>	<p style="text-align: right;">Page 104</p> <p>1 pursuant to this 1999 e-mail autodeletion 2 procedures and retention guidelines, what's your 3 understanding of what would happen to an e-mail 4 if a user didn't move it to an archived location? 5 A If they didn't move it to an archived 6 location or print it out, then after 180 days, it 7 would be deleted. 8 Q So, am I correct in understanding 9 that the decision whether a particular electronic 10 record would be deleted or preserved was in the 11 hands of the individual employee who is the 12 custodian of that e-mail account? 13 A Yes. 14 Q What was the policy before this was 15 implemented, do you know? 16 A 1999 is when I think we began our 17 e-mail. 18 Q Oh, okay. So, this was at the same 19 time as CMS was going to actually use e-mail? 20 A Yes. 21 Q On the second page, there are four 22 bullet points, the first of which was -- let me</p>
<p style="text-align: right;">Page 103</p> <p>1 A What do you mean their instructions? 2 Q Michael Odachowski's instructions. 3 He got from you the description of what a record 4 is? 5 A Yes and that's what that paragraph 6 was, the general agency records management 7 guidelines. 8 Q Other than providing the description 9 of what constitutes an agency record, did you 10 have any other involvement in crafting this 11 policy? 12 A No. I mean, they gave -- they sent 13 to me before it was released to make sure what 14 they were saying was correct. 15 Q Did you review for accuracy anything 16 other than that section entitled general agency 17 records management guidelines? 18 A Yes, where they have my name listed 19 in the next paragraph down, if anyone has 20 questions about the agency's record retention 21 schedule, they could contact me. 22 Q Okay. What's your understanding --</p>	<p style="text-align: right;">Page 105</p> <p>1 read the sentence. 2 It says, "Here are a few questions 3 you can apply to such material to decide if you 4 should store the message for future retrieval." 5 The first bullet is: "Does it have any legal 6 value?" Is that language that you provided or 7 that someone else wrote? 8 A I did not provide that. 9 Q Do you have any understanding of what 10 it means, for that to have legal value? 11 A If it has been identified under a 12 preservation order. 13 Q Moving on to next document in the 14 sequence is number 764. It is a January 28, 1999 15 e-mail from you to all e-mail users and the 16 subject is Records Filing Guidelines. 17 Could you tell me what that e-mail 18 is? 19 A Every calendar year, a notice will go 20 out to all employees reminding them that they 21 need to purge their files, file the retention 22 guidelines as stipulated, and just reminding them</p>

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<p>1 that there are specific time frames that are 2 outlined in the records schedule, that they have 3 to keep the records and they have to abide by 4 that. 5 Q And so would it be, I guess, in 6 January of each year CMS before that, HCFA, would 7 actually go through a process to make sure that 8 people preserve documents they should preserve 9 and destroy documents that, according to your 10 policy, should be destroyed? 11 A Right, or they could pack them up and 12 send them to storage. 13 Q You give a description here as you go 14 down of some guidelines in determining whether to 15 keep a file or destroy it. The first one you 16 have is administrative files, which you indicate 17 in the parenthetical: "Travel training, 18 highlight reports and extra copies of release 19 correspondence should be kept for two years." 20 Administrative files, how would you 21 describe administrative files other than the 22 examples given?</p>	<p>1 page, page 766, it is an e-mail from Delores 2 Buendia, I'll spell it, B-U-E-N-D-I-A, to you and 3 to M. Gordon on January 29, 1999 on Records 4 Filing Guidelines. It is addressed to you, I 5 guess. It says: "Vicky, thanks for the 6 clarification. I'll make sure everyone in our 7 region gets the reminder on the DOJ freeze and 8 clarify to them even though you send out the note 9 on records filing guidelines, those are just the 10 guidelines and we still need to keep all and not 11 destroy Medicare documents that you specified 12 because of the freeze." 13 Am I correct this whole e-mail 14 relates to the 1992 and 1997 Medicare secondary 15 payer freeze that you described earlier? 16 A Yes. 17 MS. MARTINEZ: Objection to form. I 18 couldn't get that in in time. 19 THE WITNESS: I'm sorry. 20 BY MR. COOK: 21 Q If you go to the very bottom of that 22 page, there is again a few bullet points and it</p>
Page 107	Page 109
<p>1 A Just the normal operating files that 2 an office has to be able to run. That are 3 operating files. You have travel. You have 4 personnel. You would have training -- I'm trying 5 to think -- just the operational files of the 6 office, nothing program related, all 7 administrative records. 8 Q Okay. 9 So, if it is program related, it 10 falls within the -- 11 A The CMS records schedule. 12 Q That I skipped over to go back to 13 later? 14 A Yes. 15 Q I understand. 16 If you flip to the next page, page 17 765, it's a January 27, '99 e-mail from you to 18 Mark Wong that looks like the same. Earlier one 19 you looked at? 20 A Yes but I was just going back to see. 21 It is. 22 Q Okay. If you just flip to the next</p>	<p>1 says: "Paper files can be disposed of in the 2 recycling bin and electronic files should be 3 deleted only if they meet the following 4 requirements: 5 That they are not required to be 6 retained according to the comprehensive records, 7 have no legal informational value, and are no 8 longer needed for office operations." 9 Is that an accurate description, in 10 1999, of the process the CMS employee should use 11 in determining whether to destroy or keep 12 documents? 13 A Yes. 14 Q In the first bullet point, you 15 describe there copies of records schedule, that's 16 the policy we skipped over and are to go back to? 17 A Yes. 18 Q The no legal informational value is, 19 among other things, whether there is a litigation 20 hold in place, correct? 21 A Yes. 22 Q Anything else other than litigation</p>

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<p style="text-align: right;">Page 110</p> <p>1 hold?</p> <p>2 A Unless a case is active.</p> <p>3 Q And the third is if you don't need</p> <p>4 it, you should throw it away?</p> <p>5 A Right.</p> <p>6 Q So, if I'm an employee, it's fairly</p> <p>7 simple. I have a policy that tells me how long</p> <p>8 this particular piece of paper should be kept</p> <p>9 before being destroyed; I've got a litigation</p> <p>10 hold that tells me I should keep it or I've got</p> <p>11 an active case, that I know that the case is out</p> <p>12 there and I should keep it; or three, I don't</p> <p>13 need it anymore, I throw it in the garbage or the</p> <p>14 recycling bin?</p> <p>15 A Or if an employee knows that</p> <p>16 possible -- there may be possible litigation or</p> <p>17 there may be a possible case that is upcoming.</p> <p>18 But, I mean, that -- it's up to each individual.</p> <p>19 Q And this process of policy, existing</p> <p>20 or pending or future litigation or I don't need</p> <p>21 it, is that generally understood, to the best of</p> <p>22 your knowledge, within CMS?</p>	<p style="text-align: right;">Page 112</p> <p>1 Q Is it possible to tell what year that</p> <p>2 prior records schedule was implemented?</p> <p>3 A If my memory serves me correctly, it</p> <p>4 was in 1979.</p> <p>5 Q Oh, goodness. So, it would have been</p> <p>6 around a long time?</p> <p>7 A Yes.</p> <p>8 Q Were there any -- I assume there were</p> <p>9 some changes between the '79 and the '98 policy.</p> <p>10 Were there any notable changes between the two?</p> <p>11 A I can't remember.</p> <p>12 Q Okay. I guess that should have been</p> <p>13 my question. Can you remember any changes</p> <p>14 between the '98 and the '79 policy?</p> <p>15 A Not specific changes, no.</p> <p>16 Q Is there anywhere a summary of what</p> <p>17 the changes are that would show how the policies</p> <p>18 changed or redlined, that you are aware of?</p> <p>19 MS. MARTINEZ: Objection to form.</p> <p>20 THE WITNESS: I don't know.</p> <p>21 BY MR. COOK:</p> <p>22 Q I think we touched on this a little</p>
<p style="text-align: right;">Page 111</p> <p>1 A Yes, because that is put in the</p> <p>2 annual reminders to them.</p> <p>3 Q And so, every year, each employee</p> <p>4 gets a reminder that if there is existing future</p> <p>5 or pending litigation, they should keep that</p> <p>6 document?</p> <p>7 A Yes.</p> <p>8 Q The next document is the</p> <p>9 September 30, 1997 note to HCFA regional records</p> <p>10 liaisons from you. That's the same as we saw</p> <p>11 before?</p> <p>12 A Yes, it is.</p> <p>13 Q And then the final document looks</p> <p>14 like just an extra copy from the document we had</p> <p>15 before?</p> <p>16 A Yes.</p> <p>17 Q I'd like to flip back to page 727,</p> <p>18 the one I asked you to keep your thumb in, and go</p> <p>19 through that May 12, 1998 comprehensive records</p> <p>20 schedule. On May 12, 1998, do you know what it</p> <p>21 was that this superseded?</p> <p>22 A AIS 0902-1.</p>	<p style="text-align: right;">Page 113</p> <p>1 bit earlier, but when applying this policy to</p> <p>2 paper documents and electronic documents, I</p> <p>3 understand this policy does apply explicitly to</p> <p>4 all paper documents.</p> <p>5 A Yes.</p> <p>6 Q How does this May 1998 policy apply</p> <p>7 to electronic documents?</p> <p>8 A If somewhere in the schedule it</p> <p>9 specifically identifies a particular format.</p> <p>10 Q Okay. And if it doesn't mention</p> <p>11 format at all, how does it apply?</p> <p>12 A To all formats.</p> <p>13 Q Okay.</p> <p>14 A In 1999, though, most of it was</p> <p>15 paper.</p> <p>16 Q But people had word processors and</p> <p>17 trials?</p> <p>18 A Yes.</p> <p>19 Q And so we'll look at -- to the extent</p> <p>20 we'll look at it later, there was a 2004</p> <p>21 revision. Were there any revisions between '98</p> <p>22 and 2004, do you recall?</p>

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<p style="text-align: right;">Page 114</p> <p>1 A There may have been. I don't want to 2 say yes or no. 3 Q Okay. If you could flip to this, 4 I've got questions about very specific sections 5 in here. Before I go any further, at the top of 6 every page on and the first page, it says 7 appendix B. What is this appendix B to, do you 8 know? 9 A That is going way back. Appendix A, 10 I think, was the National Archives and Records 11 Administration's general records schedules, and 12 those are schedules that give retention 13 guidelines to all federal agencies that have 14 records that are common to all, like everyone has 15 payroll. Everyone has personnel. Everyone has 16 budget, Freedom of Information, those different 17 types of records. I think that's what appendix A 18 was. 19 Q You mentioned the Federal Records 20 Center. It may be good to go through before 21 starting into this records schedule. What is the 22 Federal Records Center?</p>	<p style="text-align: right;">Page 116</p> <p>1 Records Center is not the repository for certain 2 documents described in the '92 and '97 MSP 3 litigation hold memoranda, am I correct? 4 A The Federal Records Center has 5 various records, whether they're from the 6 Medicare contractors or from CMS as an agency. 7 Q Okay. So, to the extent that CMS, 8 with the exception of those claims records that 9 we described earlier -- 10 A Yes. 11 Q -- to the extent that CMS has records 12 that should be preserved pursuant to its document 13 retention schedule, what does CMS do with those 14 documents? 15 A We either -- they are either stored 16 at the Federal Records Center or they are stored 17 in office file systems, or they are kept in the 18 agency's records holding area, which is a 19 warehouse where we maintain records only. 20 Q And in this schedule when we go 21 through, does it direct CMS employees which 22 location a document should go to?</p>
<p style="text-align: right;">Page 115</p> <p>1 A The Federal Records Center, that is 2 run and operated by the National Archives and 3 Records Administration who has the authority over 4 all federal agency records programs. They give 5 us our direction on what the federal guidelines 6 are and what we have to follow. 7 The Federal Records Centers are the 8 places that store the federal records for federal 9 agencies. 10 Q With the notable exception of the 11 offsite storage described in the 1992 and 1997 12 memoranda that we looked at earlier in the 13 Massachusetts litigation -- 14 A Uh-huh. 15 Q -- that the Federal Records Center -- 16 what document from CMS does the Federal Records 17 Center hold? 18 MS. MARTINEZ: Objection to form. 19 BY MR. COOK: 20 Q I know. It was confusing. I'll try 21 again. 22 As I understand it, the Federal</p>	<p style="text-align: right;">Page 117</p> <p>1 A I don't know without looking. 2 Q We'll find out as we go through. 3 A Okay. 4 Q Just so I understand, of those three 5 locations, starting with the closest, you said 6 the files within CMS? 7 A Yes. 8 Q Could you describe for me what do you 9 refer to when you say that? 10 A General filing areas or within an 11 employee's cubicle or an office. There are file 12 cabinets where official records -- official -- 13 official records of the office are kept. 14 Q Who is -- it may be obvious but who 15 is responsible for keeping and maintaining those 16 records in individual files such as that? 17 A Each office has their own -- they are 18 responsible for their own. 19 Q So, there will be CMS employees who 20 are the custodian of a set of files of some sort? 21 A Yes. 22 Q You mentioned a non-Federal Records</p>

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<p style="text-align: right;">Page 118</p> <p>1 Center storage facility, a warehouse, I think?</p> <p>2 A The warehouse is on our premises.</p> <p>3 Q Oh. It's on the premises?</p> <p>4 A Yes. Yes.</p> <p>5 Q Describe that for me.</p> <p>6 A It's a level above our warehouse, the</p> <p>7 mezzanine level. It will hold close to 9,000</p> <p>8 cubic feet of records, and that is where our</p> <p>9 temporary records are kept.</p> <p>10 Q What is a temporary record?</p> <p>11 A A temporary record is a record that</p> <p>12 does not have permanent value, and they are</p> <p>13 identified in the records schedule, which ones</p> <p>14 are permanent, which ones are temporary. The</p> <p>15 ones that are temporary will have a time frame</p> <p>16 associated to those records as far as when they</p> <p>17 can be destroyed.</p> <p>18 Q Tell me about the physical set-up of</p> <p>19 the warehouse. Is it shelves with boxes on it</p> <p>20 and labels on the outside of the boxes?</p> <p>21 A No. It is a secured room on the</p> <p>22 mezzanine level. They are -- I am trying to</p>	<p style="text-align: right;">Page 120</p> <p>1 records area is only for documents younger than a</p> <p>2 certain number of years?</p> <p>3 A Correct. I have some MSP records</p> <p>4 there, if that's an indication.</p> <p>5 Q Leaving aside the MSP records, is</p> <p>6 there any rule of thumb for how long documents</p> <p>7 are kept in the temporary storage area?</p> <p>8 A They are kept there in accordance</p> <p>9 with the records schedule.</p> <p>10 Q The information that you have on the</p> <p>11 form relating to each box, is that put into some</p> <p>12 sort of a database or electronic format?</p> <p>13 A I have a spreadsheet that I keep for</p> <p>14 the records -- I'm sorry -- the records that are</p> <p>15 in the warehouse, it is in a database that I</p> <p>16 maintain.</p> <p>17 Q Okay. And so if you have a</p> <p>18 particular box, it was sent by Louie Gabel to the</p> <p>19 temporary records location, you would know who it</p> <p>20 came from, a description, a general description</p> <p>21 of what's in it?</p> <p>22 A Uh-huh.</p>
<p style="text-align: right;">Page 119</p> <p>1 think -- it's a track file system, sort of like</p> <p>2 some of your libraries have where you turn a</p> <p>3 crank and then the whole section moves down.</p> <p>4 Each box is labeled with an accession</p> <p>5 number which is assigned by me. The boxes are</p> <p>6 also numbered. They are numbered consecutively.</p> <p>7 If under one accession, there are 20 boxes, the</p> <p>8 boxes are numbered one of 20, two of 20, three of</p> <p>9 20, and then they are placed on the shelves in</p> <p>10 assigned storage locations.</p> <p>11 Q What other information do you keep</p> <p>12 about the boxes that are put on the shelves in</p> <p>13 this location?</p> <p>14 A There is a records transmittal form</p> <p>15 that the record owner fills out as well as an</p> <p>16 inventory of what's in the boxes.</p> <p>17 Q This may seem like an odd question.</p> <p>18 What's the oldest record that you have in this</p> <p>19 temporary storage area?</p> <p>20 A I don't know.</p> <p>21 Q So, it's possible that there are very</p> <p>22 old records in there? It's not as if this</p>	<p style="text-align: right;">Page 121</p> <p>1 Q How would you assign the document</p> <p>2 destruction date for that box?</p> <p>3 A It's in accordance with the agency</p> <p>4 records schedule.</p> <p>5 Q And so would the database have a</p> <p>6 field for the date --</p> <p>7 A Yes.</p> <p>8 Q -- on which it is to be destroyed?</p> <p>9 A Yes.</p> <p>10 Q Any other fields in the database?</p> <p>11 A The accession number -- I am trying</p> <p>12 to think -- the accession number, description,</p> <p>13 disposal date, the number of boxes, the</p> <p>14 customer's name as well as their location and</p> <p>15 phone number.</p> <p>16 Q When the date comes -- when the</p> <p>17 disposal date arrives -- my eyesight is getting</p> <p>18 bad, I can't read my own writing -- the 20th of</p> <p>19 March 2007, what happens?</p> <p>20 A I won't have that as a disposal date</p> <p>21 my disposals are done quarterly.</p> <p>22 Q Okay. So, what would be an example</p>

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<p>1 of the disposal date you would have?</p> <p>2 A January -- April -- January 1,</p> <p>3 April 1 --</p> <p>4 Q The first day of each quarter?</p> <p>5 A Yes. Yes. Thank you.</p> <p>6 Q And so on January 1 -- that's a bad</p> <p>7 date, the beginning of the year -- April 1, the</p> <p>8 date comes along and there are certain number of</p> <p>9 boxes that have April 1, 2007 on them?</p> <p>10 A Yes.</p> <p>11 Q What happens to those boxes?</p> <p>12 A I go into my database and generate a</p> <p>13 notice that goes to the record owner that</p> <p>14 transmits the records to storage, telling them</p> <p>15 these records are eligible for disposal, asking</p> <p>16 them to sign off authorization for their</p> <p>17 disposal.</p> <p>18 If they cannot authorize their</p> <p>19 disposal because of litigation or other issues,</p> <p>20 they need to defer the disposal to a later date.</p> <p>21 They have to provide a justification why. They</p> <p>22 send that notice back to me. I go into the</p>	<p>1 contents were, the disposal date, and the fact</p> <p>2 that it was destroyed?</p> <p>3 A Yes. When you say it tells you the</p> <p>4 contents, it only gives you a subject line. The</p> <p>5 contents are included with the paperwork that</p> <p>6 they submit, the inventory. And that's what</p> <p>7 gives the detailed description of what is in each</p> <p>8 box.</p> <p>9 Q Is the inventory kept even after the</p> <p>10 box is destroyed?</p> <p>11 A Yes. I have it.</p> <p>12 Q So if a box was destroyed -- let me</p> <p>13 ask another question. How far back does your</p> <p>14 current database go?</p> <p>15 A I can't remember. I am trying to</p> <p>16 remember when we moved up to -- I'm trying to</p> <p>17 remember when we moved up to the complex. I</p> <p>18 think it was in '98, probably around this time,</p> <p>19 in '98.</p> <p>20 Q And so for records from this</p> <p>21 warehouse that were destroyed between '98 and</p> <p>22 today, you would be able to go into your database</p>
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<p>1 system and I change the disposal date to the new</p> <p>2 disposal date.</p> <p>3 If they authorize their disposal, I</p> <p>4 then generate a notice to our warehouse staff,</p> <p>5 giving them the accession number, the box numbers</p> <p>6 and the locations of the boxes that are to be</p> <p>7 pulled and destroyed, and they do that. Once</p> <p>8 that's completed, they send the notice back to</p> <p>9 me. When I get the notice, I go back into the</p> <p>10 system and put that records were destroyed.</p> <p>11 Q And so the record stays within your</p> <p>12 system as having been destroyed?</p> <p>13 A Yes.</p> <p>14 Q So, you can go back and determine I</p> <p>15 received the box on this date, the custodian was</p> <p>16 Louie Gabel. I sent the notice to Louie Gabel on</p> <p>17 this date telling him it was time to dispose of</p> <p>18 it. We authorized it on this date?</p> <p>19 A Not all that is my system, the</p> <p>20 authorization date or anything.</p> <p>21 Q But it does show the date it was</p> <p>22 received, who the custodian was, what the</p>	<p>1 and determine by custodian the contents,</p> <p>2 referring back to an index which is filed</p> <p>3 elsewhere?</p> <p>4 A Uh-huh.</p> <p>5 Q And the date on which that box with</p> <p>6 those contents was destroyed?</p> <p>7 A Yes.</p> <p>8 Q How were they destroyed?</p> <p>9 A Shredded.</p> <p>10 Q Cross shred? I assume there is some</p> <p>11 sort of --</p> <p>12 A I don't know. The warehouse has --</p> <p>13 they go through -- it's the warehouse's</p> <p>14 responsibility. They have a contractor, a</p> <p>15 federal contractor that does disposals.</p> <p>16 Q Prior to 1998, how were records kept</p> <p>17 of the retention or disposal of documents in the</p> <p>18 CMS warehouse?</p> <p>19 A Prior to '98, we were at an offsite</p> <p>20 warehouse and they were kept in a caged area.</p> <p>21 They were boxed and numbered with an accession</p> <p>22 number and an inventory sheet was done. It was</p>

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